IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 15264 of 2003

with

SPECIAL CIVIL APPLICATION No 15276 of 2003

with

CIVIL APPLICTION NO. 7738 OF 2003.

For Approval and Signature:

HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVNA WATER SUPPLIERS

Versus

NOTIFIED AREA OFFICER

Appearance:

1. Special Civil Application No. 15264 of 2003

MR DAKSHESH MEHTA for Petitioner No. 1

MR PR NANAVATI for Respondent No. 1,3

NOTICE SERVED BY DS for Respondent No. 2

MR GM JOSHI for Respondent No. 4

SERVED BY RPAD - (N) for Respondent No. 4

NOTICE SERVED for Respondent No. 4

2. Special Civil Application No. 15276 of 2003

MR SHIVANG J SHUKLA for Petitioner No. 1

MR PR NANAVATI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE J.N.BHATT
and
HON'BLE MR.JUSTICE D.N.PATEL

Date of decision:28/04/2004

CAV JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.N.PATEL)

In these petitions under Article 226 of the Constitution of India, the petitioners have challenged the allotment of tender for providing drinking water at Socia Ship Breaking Yard. The petitioner is providing drinking water at Socia Ship Breaking yard since 1997. The contract with the petitioner came to an end on 31st March, 2003. The petitioner was supplying water at the rate of Rs.33/- per MT.

2. The tender notice bearing no. 1/02/03 dated 7.3.2003 was issued by respondent no.1 for supply of water for one year whereby the bidders were to supply their sealed tenders on or before 20th March, 2003. The tender notice given in newspaper is at Annexure "D" to the memo of the petition, Special Civil Application no. 15264 of 2003. It is alleged that there were certain pre-conditions mentioned in the tender notice which inter alia provide that the bidder must have its own borewell, tractors, trailers, tankers etc. The petitioners had filled up the tender and submitted within time limit stipulated in the tender notice. The respondent no.1 allotted the tender work to respondent no. 4 being the lowest bidder. The details of conditions of tender are referred in the copy of Tender Form which is at Annexure "C" to the memo of petition No. 15276 of 2003. It is contended that Special Civil No. 15264 of 203 may be treated as the main matter as another Special Civil Application No. 15276 of 2003 also raises same contentions.

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3. The petitioners have raised an objection to the effect that The Excellent Yuvak Mandal (the respondent no. 4) is not fulfilling all the pre-conditions mentioned in the tender notice. As per

the petitioner, the respondent no. 4 does not have its own borewells, nor they have tractors, tractor trailers and tankers. It is contended by the petitioner that the petitioner (of Special Civil Application No. 15264 of 2003) with another bidder, namely Chandrasinh G. Gohil (who is petitioner of Special Civil Application no. 15276 of 2003) had also raised the same objection vide letter dated 28.3.2003 against the supply of tender form to the respondent no. 4 i.e. Shri Excellent Yuvak Mandal. It is also contended by the petitioner that without considering the objections and representations of the petitioner bidder as well as another bidder, the respondent authority has, arbitrarily issued tender form to Shri Excellent Yuvak Mandal i.e. respondent no. 4 who has agreed to provide water at the rate of Rs.20/per MT. It may be noted at this stage that the petitioner was providing water since 1997 at the rate of Rs.33/- per MT. It is also admitted in the memo of petition in para 3.11 to the effect that the respondent no.1 authority had written a letter dated 29th May, 2003 (contract with the petitioner came to an end with effect from 31st March, 2003, despite this fact, the petitioner was supplying water to Socia Ship Breaking Yard) asking whether the petitioner is prepared to supply water at the rate of Rs. 20.50 per MT.

4. The petitioner was not ready to supply water at the rate of Rs.20.50 per MT and, therefore, writ petition bearing Special Civil Application no. 7920 of 2003 was preferred before this Court, wherein this Court had directed the petitioner to make a representation before the respondent authorities. The respondent authorities, after considering the facts and circumstances of the case, rejected the representation vide their letter dated 26.8.2003. The said reply is at Annexure "M" to the memo of petition. Similarly, one more petition bearing Special Civil Application no. 14125 of 2003 was filed before this Court by another bidder, namely Chandrasinh G. Gohil, wherein the second bidder raised an objection against the respondent no. 4 that the respondent no. 4 is not having any vehicle of its own and yet the said respondent might be given the contract. The said petition was disposed of as withdrawn with observations that it was premature, with further observation that if the respondent gives contract to Excellent Yuvak Mandal, it may not be implemented for a period of one week.

5. The main contention of the petitioner is that the respondent no. 4 Shri Excellent Yuvak Mandal to whom the contract for the supply of drinking water is

given, is not having its own borewell, tractors, trailers and tankers etc. For that, the petitioner as well as another bidder had filed separately two writ petitions as referred to hereinabove and both were disposed of by this Court, one for making a representation and another being a premature petition. The petitioner has also contended that it is providing drinking water at Socia Ship Breaking Yard since 1997 at the rate of Rs.33/- per MT, whereas the respondent no. 4 has agreed to supply drinking water at the rate of Rs.20/- per MT. The contract with the petitioner for supply of drinking water has come to an end on 31st March, 2003 in the month of May, 2003 a letter was written by the respondent authorities to the effect that whether the petitioner is ready to supply drinking water at the rate of Rs.20.50 ps. mer MT against which the petitioner was not ready and had filed a writ petition being Special Civil Application no. 7920 of 2003 which came to be disposed of by this court and directed the respondent to consider the respondent, if any, preferred by the petitioner.

6. The learned advocate appearing for the respondent submitted that not only two writ petitions have been disposed of by this Court as referred to hereinabove, but for the same subject matter, one Civil Suit bearing Regular Civil Suit no 1 of 2003 was also filed by Mr. Chandrasinh G. Gohil who was another bidder of the same tender. In the said suit, the petitioner had challenged inter alia, the tender process on several grounds. An interim injunction application exh. 5 was also filed by the plaintiff and after hearing the arguments of rival parties, the learned Special Judge, Alang Ship Breaking Yard vide his order dated 26th August, 2003 dismissed the application for interim injunction exh. 5 preferred by Mr. Gohil against which an appeal was preferred by Mr. Gohil being Civil Miscellaneous Appeal No. 98 of 2003 and the same was also rejected by the learned Joint District Judge, Bhavnagar vide his order dated 20.9.2003. It is contended by the learned counsel for the respondent authority that in both the proceedings preferred by Mr. Gohil (one of the bidders of the same tender), very same contentions were raised which are raised in this petition and after considering all the arguments on behalf of the parties, the application for grant of injunction came to be rejected. Thus, it was contended by the respondents that two petitions and one civil suit alongwith application exh. 5 for interim injunction and one Civil Miscellaneous Appeal against the order passed below exh. 5 have not given any fruitful result to the petitioner or to another bidder who is situated at par with the

petitioner and therefore, once again the present petition is filed by the petitioner and hence, this petition should be dismissed at the admission stage. It is also contended on behalf of the respondents that the respondent no. 4 Excellent Yuvak Mandal is possessing all pre qualification conditions referred to in the tender notice.

7. It is also contended on behalf of the respondents that earlier the work contract entered into between petitioner and the respondent nos. 2 and 3 was in pursuance of the order passed by this Court in one of the public interest litigations filed by some NGOs alleging against the respondent nos. 2 and 3 for not giving proper infrastructural facilities including supply of potable water at Alang Socia Ship Breaking Yard, where respondent nos. 2 and 3 appeared to have undertaken before the Court for supply of water through tankers to the tune of 5000 litres per plot at Alang/Socia Ship Breaking Yard and thus, the contract entered into by and between the petitioner and the respondent no. 3 was an emergency situation to fulfil the undertaking given to this Court in one of the public interest litigations. It is also contended by the respondents that the work allotted to the petitioner was an emergency situation and without inviting any tenders. The petitioner is taking advantage of this situation. This aspect of the matter has also been clarified while rejecting the representation of the petitioner.

8. The learned counsel for the respondents submitted that after the tender documents were received from various parties, including that of the petitioner, the Advisory Board consisting of 11 members has scrutinised the tender documents of each and every party and after considering the merits of each respective party, the work order has been issued considering the lowest price in favour of Shri Excellent Yuvak Mandal, respondent no. 4. It is contended by the learned counsel for the respondent that if one carefully reads tender conditions, such conditions were kept to assess the capability of a party to supply water as required by the respondent no.1 and the conditions of the tender notice are in the form of guidelines. Moreover, it nowhere stipulates that the party participating in the tender process is required to have their own vehicles nor it requires that it should have their own borewell etc. However, the office bearers of respondent no. 4 Shri Excellent Yuvak Mandal own their own borewells as is shown in form no. 7/12, document of land record. It only requires that the aspiring participant has to have

adequate facilities to fulfil their contract.

9. It is contended by the respondents that on overall scrutiny of the papers, submitted to the Advisory Board of the respondent, the Advisory Board was satisfied that the bid of Shri Excellent Yuvak Mandal is the lowest and considering the lowest price factor, a resolution bearing no. 3 of 2003 was passed by the Advisory Board on the basis of the recommendation of the said Advisory Board and a unanimous resolution was passed and the work contract was awarded to the respondent no. 4 for the supply of drinking water. All the documents submitted alongwith the tender by the respondent no. 4 are annexed at Annexure "II" with the affidavit-in-reply. It is also contended by the respondent that a decision has been taken by the Advisory Board considering all 11 high ranking Government officers who have no individual interest in the matter and therefore, the question of any favouritism to the respondent no. 4 does not arise at all. Nonetheless, as per the conditions of the tender notice, the final authority to finalise the tender vests in the respondent no.1 which includes the right to relax certain conditions in the public interest and in the interest of the authority. Under the circumstances, the respondents have decided to give the work order to Shri Excellent Yuvak Mandal, respondent no. 4 herein, which is a non-profit making organisation having good past contract record and have offered lowest price, at RS.20/per MT of drinking water, whereas the petitioner is supplying drinking water at the rate of RS.33/- per MT. It cannot be said by any stretch of imagination that the decision of the respondents is arbitrary or illegal. On the contrary, it is in the best interest of the respondents, considering overall facts and circumstances of the case.

10. We have carefully gone through the facts of the case. Considering the contentions raised by the learned advocates for the rival parties, we are of the opinion that as the respondent no.4 is the lowest bidder in price, which is at the rate of Rs.20/- per MT of drinking water, is allotted the tender work. The petitioner was supplying water at the rate of RS.33/- per MT. Though the respondents have issued a letter in the month of May, 2003 (though the contract with the petitioner was over in the month of March, 2003), to supply drinking water at the rate of Rs.20.50 ps. per MT, the petitioner denied to supply the same. Looking to the tender notice which is at annexure "D" to the memo of petition. The conditions referred to in the tender notice were not conditions precedent for becoming

eligible for submitting the offers. Borewells, tractors, tankers etc. were only the guidelines. Nowhere it stipulates that the party participating in the tender process must be having its own vehicle nor it requires in the said tender notice that the party offering to supply drinking water must have its own borewell. Looking to the nature of contract also which is for providing drinking in Socia Ship Breaking Yard, we agree with the contention raised by the learned advocate for the respondents that the aspiring participant should have adequate facilities to fulfil the work contract, but all these facilities which are referred to in the tender notice were not the condition precedent or qualifications for the participants-tenderers. Two writ petitions being Special Civil Application nos. 7920 of 2003 and 14125 of 2003 and one Civil Suit bearing civil suit no. 1 of 2003 and one Civil Miscellaneous Appeal against the order of interim injunction below exh. 5 were filed either by the petitioner or by similarly situated another bidder could not fetch any favourable order in their favour and therefore, one more attempt on their part by way of filing this writ petition has been made by the petitioner. Prima facie, supply of water is not a work of complicated in nature like construction or electrical work. There is also a remarkable price difference in the rate. The petitioner was supply water at the rate of Rs.33/- per MT whereas the respondent no. 4 Shri Excellent Yuvak Mandal is supplying water at the rate of Rs.20/- per MT, on no profit no loss basis. The difference in price is an eye catching difference. The petitioner was given contract to supply drinking water, as an emergency situation and that too, without inviting any tenders. The petitioner cannot take advantage of this situation. The petitioner was supplying water under this emergency situation drinking water at the rate of RS.33/- per MT since 1997. For the first time, the respondent authority has given tender notice in the month of March, 2003 inviting tenders for drinking water which is at Annexure "D" to the petition. The tenders including that of the petitioner as well as respondent no. 4 were scrutinised by Advisory Board of 11 members of high ranking Government officers and considering overall facts and circumstances including the price offered by the respondent no. 4 and the petitioner, the offer of the respondent no. 4 being the lowest one, has been given the work contract to supply drinking water in the area of Socia Ship Breaking Yard.

11. There is no procedural impropriety or defect in awarding work contract to the respondent no. 4 nor could we found any illegality or irrationality in the

decision-taking process by the Advisory Board who finalised the contract. No malafide is alleged and abuse of power by respondent nos. 1 to 3is not established.

12. In view of the above position, we are of the candid opinion that petitions are devoid of any merit and substance and deserve to be dismissed. This Court does not find any justification to interfere in exercise of extraordinary jurisdiction under Article 226 of the Constitution, in the matter of award of contract of supply of water. Therefore, these petitions are dismissed in limine. Notice is discharged in each petition without any order as to costs.

13. Civil Application no. 7738 in Special Civil Application no. 15264 of 2003 is also disposed of in view of the above order. Otherwise also, it is of no merits. Interim prayer prayed for by the petitioner is to the effect that the respondent no. 1 should not enter into contract with respondent no. 4. The interim relief granted by the Court was served, to the respondent no.1, after the work of supply of water was started by the respondent no. 1. As both Special Civil Applications are dismissed on merits, the Civil Application shall also stand disposed of.

(J.N.Bhatt,J)

(D.N.Patel,J)

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